FILED

No. (1) 99 299 AUG 3 1999

OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1999

JONATHAN G. KING, AND SARAH S. KING

Petitioners

vs.

THE TOWNSHIP OF EAST LAMPETER, JOHN W. SHERTZER, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, GLENN L. EBERLY, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, WIL SOLLENBERGER, INDIVIDUALLY AND IN HIS OFFICIALLY CAPACITY, J. JACOB BARE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, MIKE LANDIS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, RALPH M. HUTCHINSON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, ZONING HEARING BOARD, RALPH A. HENDERSHOTT, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, RUSSELL E. LATSCHAR, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, DALE SCHMITZ, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY. R. LEE YOUNG, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, AND TAMMY LANTZ,

Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITION FOR WRIT OF CERTIORARI

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24pp

QUESTIONS PRESENTED

1.) Did the Appeal Court err in holding the statute of limitations presented petitioners from going forward?

2.) Did the Appeal Court and the District Court abuse the standard of review applicable in this case?

3.) Did the District Court and the Appeal Court err in ignoring petitioners 4th Amendment claim for unlawful seizure of his property?

4.) Are petitioners entitled to the remedies of 42 U.S.C. 1981?

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OPINIONS BELOW

On May 5, 1999 the Third Circuit Court of Appeals at No. 98-1806 filed a 16 page opinion upholding the decision of the United States District Court For the Eastern District of Pennsylvania which dismissed plaintiffs complaint in a 90 page opinion docketed at D.C. No. 97-CV-05034. The Third Circuit Opinion, which repeats the format of the District Court Opinion issue by issue, is attached hereto as Appendix "A".

STATEMENT OF JURISDICTION

The Judgement of the United States Court of Appeals for the Third Circuit was entered on May 5, 1999. It is attached here. The jurisdiction of this Court is based on Rule 10 (a) and (C).

CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment to the United States Constitution:

> No state shall make or enforce any laws which shall abridge the privilege or immunities of citizens of the United States, nor shall any state deprive any person of life. liberty,or property without due process f laws; nor deny to any person within its jurisdictions the equal protection of the law.

STATEMENT OF THE CASE

Petitioners are an Amish family from Central Pennsylvania.They began operating a hand made furniture shop in 1961. The business grew and the family prospered. In 1970 the

local government adopted a zoning ordinance. At that time the petitioners were manufacturing furniture, whole sailing and retailing furniture, doing specialty millwork. They had on site storage, signs for the business and the business owed two adjacent lots. During the ensuring years the petitioners were endlessly harassed. Citation after citation was filed against them including numerous actions for contempt of court. At one point the municipal defendants below went onto plaintiffs property without the benefit of court orders or consent went on petitioners property where they seized and carried off motor vehicle, equipment, fittings machinery, and trailer. This property was never accounted for and has never been located or returned. The petitioner Jonathan G. King was jailed for 4 days and 4 nights. During this process the petitioners property was entered and searched without Court order or warrant. The defendants below stationed themselves just off of petitioners property and persistently took pictures, time and time again of petitioners and their family and friends. When the District Court and the Third Circuit considered these issues they erroneously violated the standard of review that should have governed this case below thereby denying them an opportunity to have a jury consider numerous disputes of numerous material facts. Lastly, and of great importance for this court is the clearly erroneous finding by the trial court below (ratified by the Third Circuit) that petitioners are not entitled to use the remedial statute 42 U.S.C. 1981

REASONS FOR GRANTING THE WRIT

Access to our courts should not be governed or influenced by ones station in life

uniqueness, ethnicity, or occupation. The petitioners are Amish, a German religious sect who set up ethnocentric centric religious enclaves in the United States and Canada hundreds of years ago. Partly because of religious beliefs, and also because of distinct ethnic and cultural differences that affect language communication and non confrontational attitudes towards the legal system and negotiations with third persons, people like the petitioners are often treated differently by the police and local regulators. Here, the mistreatment took the form of outrageous intrusions upon the rights of those whose nonconforming property rights and personal idiosyncracies were different from the majority population. Eventually, proceeding pro se, as here, the Petitioner turned to the Federal District Court for the Eastern District of Pennsylvania. But in reviewing plaintiffs cause of action the District Court committed certain errors, and these errors were repeated by the Third Circuit Court of Appeals. First as to the statute of limitations. This Court should provide more guidance as to when and how a statute of limitations applies. The petitioners endured years of both legal and non legal harassment. They were constantly watched and photographed just to annoy them. Because they are shy about enlisting legal help, and fighting back for religious reasons, they did miss legal deadlines from time to time. But over all, they were victimized on a regular basis by the endless plethora of harassment. The courts below did not bar all of petitioner's cause on statute of limitation grounds it did use an isolated event analysis to deny petitioner the chance to take their case back to include two decades of outrageous abuse. Two cases cited by the Appeal Court should be examined by this Court namely,

Courtney v. RaSalle Union, 124 F.3d 494 (3d Cir 1997) and E.E.O.C. Westinghouse Elec Corp, 725 F.2d 211 (3d Cir 1983). Merely by continuing the legal struggle against petitioners has this effect of depressing and oppressing them. The effect denied them of the freedom to react without restraint to the actions taken against them by the defendants below, especially the unlawful seizures they suffered.

Second, and perhaps most important of all, the matters before this Court, is the abuse of summary judgement by federal district and appellate courts to the extent that an inordinate number of civil rights plaintiffs are non-suited. The plaintiffs ran afoul of the frequently quoted U.S. Supreme Court case Celotex Corp v. Catrett, 477 U.S. 317(1986). That case essentially holds that there is a burden shifting which occurs in summary judgement situations where if a defendant established a fact by say, affidavit, then the plaintiff must disprove it. The idea is that there must by a bonafide dispute. What happens though, on a regular basis, is that the federal courts interpret, or take a side, usually for the defendant in a context where all that's being reviewed are self serving statements and depositions that don't show the tone, nature, or demeanor of the witness. This case should be used as an opportunity by this court to illustrate the way summary judgements should not be used to exclude plaintiffs from juries, or a day in court, in civil rights cases.

Third, the petitioners 4th Amendment claims for unlawful searches and seizures should not have been discarded. Even though not perfectly pled below, and not artfully presented, the District Court and the Appellate Court should have recognized that

plaintiff made out a cause of action for the deprivations of their right to be free of unlawful seizures of their personal property. The District Court says the petitioner didn't cite an portion of the record in the case in support of this proposition. That's because there was no record to cite. This was clearly a disputed material issue in the case and should not have been dismissed. The Third circuit did not even look at this issue.

Last, this Court should reverse the Third Circuit on the application of 42 U.S.C. 1981. The Amish are a distinct ethnic group. They are German Americans who speak a distinct dialect that mixes German and English. There are no Black or Hispanic Amishmen. They also suffer frequently because of their very ethnicity. This court should find that they are in a suspect category.

CONCLUSION

For a variety of reasons this case should be remanded with instructions to find that 42 U.S.C. 1981 applies to the petitioners. Further, this Court should hold that the District Court and the U.S. Court of Appeals erroneously ignored petitioners 4th Amendment claims for unlawful seizure of petitioners property. The court should also re-evaluate the standard of review for summary judgement in civil rights cases because petitioners burdens were inordinately high, and last the court should review the "continuous violation" doctrine and not exclude the violation that petitioners suffered before the local Court opinion of 1997.

APPENDIX

UNREPORTED-NOT PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 98-1806

JONATHAN G. KING; SARAH S. KING,

Appellants

v.

THE TOWNSHIP OF EAST LAMPETER, JOHN W. SHERTZER, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, GLENN L. EBERLY, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, WIL SOLLENBERGER, INDIVIDUALLY AND IN HIS OFFICIALLY CAPACITY, J. JACOB BARE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, MIKE LANDIS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, RALPH M. HUTCHINSON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, ZONING HEARING BOARD, RALPH A. HENDERSHOTT, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, RUSSELL E. LATSCHAR, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, DALE SCHMITZ, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY. R. LEE YOUNG, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, AND TAMMY LANTZ,

---

Appeal from the United States District Court
For the Eastern District of Pennsylvania
D.C. No: 97-CV-05034

District Judge Honorable
Franklin S. VanAntwerpen

Submitted Under The Third Circuit LAR 34.1(a)
March 26, 1999

Before: GREENBERG, ROTH, AND ROSENN, Circuit Judges.

(Filed May 5, 1999)

MEMORANDUM OPINION

ROSENN, Circuit Judge.

This controversy between the appellants, Jonathan G. King and Sarah, his wife, the Township of East Lampeter (Township), and the many individual defendants, is reminiscent of the Thirty Years' War. The parties in this instance may not be as numerous or the geographical concerns as great, but the time period spanned by both and the emotion of the parties are nearly as high. The dispute before us first commenced in 1970 when the Township adopted its first zoning ordinance. Almost ten years before the ordinance, the Kings began operating a woodworking shop in Whitmer, East Lampeter Township, Lancaster County, Pennsylvania. The zoning ordinance overnight transformed the King's operation into a non-conforming business use in a residential district.

In September, 1971 the Township granted the plaintiffs an exception to expand their mill building subject to certain conditions. The Zoning Board rejected subsequent efforts to obtain variances by the plaintiffs who then expanded their facilities without the

Township's zoning board's approval. After unsuccessful appeals to the county court, and in one instance to the State Commonwealth Court, counter-litigation by the Township, and a compromise agreement, the County Court ultimately issued an order on June 21, 1996, directing the plaintiffs to remove the new construction. The plaintiffs never complied with that order and since then have been held in contempt by the court a number of times.

Subsequently, by a Decree Nisi dated June 27, 1997, the County Court permanently enjoined the plaintiffs from continuing their business, ordered them to remove certain accessory structures and facilities located on the property, discontinue the display of merchandise, remove all outside storage, and pay certain fines and legal fees. In response, On October 15, 1997, the plaintiffs selected a federal forum in which to wage their struggle. They filed a complaint in the United States District Court for the Eastern District of Pennsylvania against the Township, the Township supervisors, the Zoning Hearing board and its individual members, Township manager Ralph Hutchinson, former zoning officer Russell E. Latschar, and current zoning officer R. Lee Young. Tammy Lantz, a neighbor, not a public official, also is named as a party defendant.

The plaintiffs alleged crimes under the Fifth and Fourteenth Amendments of the United States Constitution, portions of the Pennsylvania Constitution, and under 42 U.S.C. 1981, 1983, and 1985(3). They also alleged that the defendants and "some neighbors" who are unnamed in the Amended Complaint, except for Lantz, conspired to deprive them of their rights and to interfere with their business operation. Following discovery, the Township defendants and defendant Lantz filed separate motions for summary judgement. The plaintiffs

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subsequently filed their own motion for summary judgement. The district court granted defendant Lantz's motion for summary judgement and the Township defendants' motion for summary judgement. It denied the plaintiffs' motion for summary judgement. The plaintiffs timely appealed. We affirm.

I

The district court's granting of summary judgement in favor of the defendants and the denial of plaintiffs' motion for summary judgement are subject to plenary review. See e.g.Watters v. City of Philadelphia, 55 F.3d 886, 891 (3d Cir. 1995). We now turn to each of the issued raised on appeal by the plaintiffs and briefly discuss them seriatim).

A.

The Statute of Limitations

On appeal, the Kings raise numerous separate and distinct issues. Of these, the threshold question for us, as it was for the district court, is the Statute of Limitations. The district court held that the majority of plaintiffs' claims were barred by the two year statute of limitations. The plaintiffs argue on appeal that this was a jury question, asserting that the Township's attempts to enforce the zoning requirements were part of a continuing pattern of harassment or discrimination.

Judge VanAntwerpen wrote an exhaustive ninety page opinion carefully examining the facts and the law. He concluded that the plaintiffs failed to present any evidence that

the Township's attempts to enforce its zoning regulations were part of a continuing pattern of harassment or discrimination. Consequently, the court held that the majority of the plaintiffs' claims were barred by the two year statute of limitations.

The plaintiffs assert that the district court erred by failing to allow the statute of limitations issue to go the jury, asserting that the point of time at which an injured party should reasonably be aware that he or she has suffered an injury is generally an issue of fact to be determined by the jury. The plaintiffs contend that the court narrowly applied the statute of limitations and disregarded "the context and unique posture in which this case had evolved." They acknowledge, however, that "it is difficult to precisely pinpoint the exact time in which it can be fairly said that the Kings should be chargeable with making further inquiry into alleged constitutional violations and whether a cause of action had accrued in their favor".

The plaintiffs claim that the acts of Messrs. Nolt and Miller, the individuals who supervised the 1991 seizure of the plaintiffs' property, established a continuing pattern of official abuse and misconduct including the unreasonable search and seizures in violation of plaintiffs' constitutional rights. They further claim that the permanent injunction of June 1997, shutting down their business was the final culminating and continuing unconstitutional act.

'''[A] plaintiff may not rely on the continuing violation theory to advance claims about isolated instances of discrimination concluded in the past, even though the effects persist into the present.''' Courtney v. LaSalle Univ. 124 F.3d 494, 505 (3d Cir. 1997) (quoting E.E.O.C. v. Westinghouse Elec. Corp., 725 F.2d 211, 218 (3d Cir. 1983). None of the

facts proffered by the plaintiffs establish that the defendants engaged in any unconstitutional conduct within the two year period to the initiation of this lawsuit. We have held that Pennsylvania's two year statute of limitations for personal injury applies to Federal civil rights claims. Bougher v. University of Pittsburgh, 882 F.2d 74, 76 (3d Cir. 1989). Accordingly, we see no error int he district court's conclusion that the plaintiffs' conspiracy claims were barred by the statute of limitations.

B.

The Noerr-Pennington Doctrine

Photographs taken by defendant Lantz were admitted into evidence during a September 1996 hearing in the County Court. Lantz testified at that hearing about he condition of the plaintiffs' property. In granting summary judgement in Lantz's favor, the district court found '''that the obvious aim of her testimony was to ensure the Plaintiffs compliance with local zoning regulations.''' (08/13/98 Order at 36) Also, the court found no evidence that Lantz's activities were under the direction of the Township at any time; she was acting merely as a neighbor who claimed to be adversely affected by the plaintiffs' expanded operations in disregard of the zoning ordinance.

The plaintiffs complain that the district court should have analyzed Lantz's activities under a conspiracy theory. They also contend that the district should have accepted their allegations as true and leave it to the defendants to disprove the absence of a genuine issued od material fact. We disagree.

The Noerr-Pennington Doctrine protects citizens form liability for exercising their

lawful rights to petition state and local governmental bodies. See e.g. Brownsville Golden Age Nursing Home, Inc., v. Wells, 839 F.2d 155, 160 (3d Cir. 1988). ''The problem is not too much citizen involvement but too little.'' Id. The s no conspiracy exception to the immunity afforded by Noerr-Pennington Doctrine. See City of Columbia v. Omni Outdoor Advertising, Inc., 499 U.S. 365, 383 (1991). There is no evidence that Lantz's activities were conspiratorial or otherwise unlawful. Moreover, the plaintiffs fail to appreciate that they, as the non-moving party, are required to make a showing sufficient to establish the existence of an essential element to their case. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

Accordingly, the district court committed no error in granting summary judgement in Lantz's favor.

C.

The Taking Claim

The district judge concluded that the plaintiffs' attack in the United States District Court's permanent injunction issued in October 1997 was barred by the Rooker-Feldman doctrine. Under that doctrine, a federal district court lacks subject matter jurisdiction to review final adjudications or to evaluate constitutional claims ''that are inextricably intertwined with the state court's decision in a judicial proceeding.'' Focus v. Allegheny County Court of Common Pleas, 75 F3d 834, 840 (3d Cir. 1996). Notwithstanding, the district court in the instant case explained that the plaintiffs' taking claim must be dismissed, both because the plaintiffs had failed to introduce any evidence of damages and because they had not

been deprived of all economically viable use of their land.

The plaintiffs contend that the district court erred in granting summary judgement on their claim for the regulatory taking of property, asserting that the Rooker-Feldman doctrine doe snot bar the district court from assuming subject matter jurisdiction. We disagree. The record shows that under the County Court's order the plaintiffs were not enjoyed from making use of their property in ways for which zoning approval had been approved. See Midnight Sessions, Ltd. v. City of Philadelphia, 945 F.2d 667, 676-677 (3d Cir. 1991)(To establish a taking claim, plaintiff must establish the diminution of all economically viable uses). Moreover, the plaintiffs concede that the Township defendants are entitled to regulate the plaintiffs' property with the object of protecting the community's health, welfare, and safety.

Accordingly, we see no error in the district court's application of the Rooker Feldman doctrine and refusing to exercise subject matter jurisdiction of the plaintiffs' claim on the regulatory taking of property.

D.

Equal Protection

In their amended complaint, the plaintiffs alleged that the Township's actions would discourage the development of Amish controlled enterprises int he Township. The plaintiffs' brief in opposition to the Township's motion for summary judgement failed to argue that the plaintiffs had been

discriminated against as members of a protected class.

Notwithstanding the district court addressed the plaintiffs' equal protection claims. The court found that the plaintiffs failed to point to any facts showing that the Township was aware of the plaintiffs' religious affiliation when initiating any of the various zoning enforcement actions. Consequently, the court applied the rational basis test. In so doing, the court determined that the Township's actions taken against the plaintiffs were rationally related to a legitimate governmental purpose. These actions included, among others, the 1991 legal proceedings to enforce the zoning regulations.

On appeal, the plaintiffs claim that the district court erred in failing to treat them as members of a protected class and failing to apply the accompanying strict scrutiny standard. They contend that "[a]s controlling case law makes, clear neither their religious affliction nor racial identity need to be establish [sic] for purpose of protection under the Civil Rights Laws..." Notwithstanding their claim that religious affiliation need not be established, the plaintiffs note that John King's affidavit established that the plaintiffs are members of na identifiable class. We disagree.

The plaintiffs fail to point to any facts showing that the Township's actions were motivated by religious animus. To the contrary, the record is absent of any proof establishing that the Township was even aware of the plaintiffs purported affiliation with the Amish. Accordingly, there was no error in the entry of summary judgement in the defendants' favor on this issue.

B.

Due Process

The plaintiffs contend that they were unconstitutionally deprived of their property and of their liberty interest through arbritary and capricious governmental action. These are separate interests involving different standards. Specifically, plaintiffs state "[t]he court erred in not allowing the jury to examine for fact-finding purposes whether the named Defendants in taking actions against Plaintiffs, were motivated by bias, bad faith or improper motive." In other words, the plaintiffs appear to be arguing, inter alia that the Township's governmental conduct is arbritary and capricious and that this was a question of fact for the jury, and not the court, to decide. Their argument lacks merit.

Local ordinances that regulate land development and use are a constitutionally sound, Village of Euclid Ohio v.. Ambler Reality Co, 272 U.S. 365, 395 (1924); see e.g. Township of Hamden Cumberland County v. Tenny, 379 A.2d 635, 638 (Pa. Common Ct. 1977), and it was clearly the plaintiffs' failure to comply with applicable zoning regulations and valid court orders that resulted in the shutting down of their business.

The district court found that the plaintiff failed to present any evidence that showed that the Township defendants acted in an arbritary and capricious manner and/or they deprived plaintiffs of a protected right. The court observed that local ordinances regulating land development and use are reasonable efforts under the police power to safeguard the health, safety and general welfare of the public and are constitutionally sound. We agree. The Court found that most of

the enforcement action by the Township was attributable to the plaintiffs' own failure to comply with the applicable zoning regulations and valid court orders. The record supports this finding.

As to the liberty aspect of plaintiffs' due process claim, the plaintiffs alleged that they were deprived of the right to pursue their chosen profession free from unreasonable governmental interference. The district court ruled that the Rooker Feldman doctrine precluded the court from assuming jurisdiction of this issue. The court noted that even if it did assume jurisdiction there were no facts supporting any constitutional deficiency in the state court's order granting the Township's request for injunctive relief.

The plaintiffs contend that they properly state "a procedural due process claim under the Third Circuit precedents because Pennsylvania did not provide them a full judicial mechanism with which to challenge the 1995 Enforcement Notice issued by Zoning officer Latschar." We disagree.

The record shows that the plaintiffs have proceedings presently pending before the Commonwealth Court that addresses this issue. Accordingly, the district court committed no error in ruling under the Rooker-Feldman doctrine that it was inappropriate for it to assume jurisdiction of this issue.

F.

Injunctive Relief

The district court concluded that the plaintiffs had failed to satisfy to any extent the four-part test for entitlement to injunctive relief, i.e. the plaintiffs' failed to show that: 1) they suffer irreparable harm; 2) they are likely to prevail on the merits on

their claim; 3) the potential harm to the plaintiffs outweighed any harm that likely would be inflicted ont he defendants if the injunction were granted; and 4) the granting of the injunctive relief will not negatively impact the public interest.

The plaintiffs argue that the district court was precipitous in its decision making because the record was "insufficiently constituted and developed to support the Court's ruling of summary judgement on this issue." Once again, the plaintiffs' assertion is without merit. Rather than point to facts that establish the legal threshold for injunctive relief, the plaintiffs merely make conclusory legal assertions int heir appellate brief. Again, we see no error on the part of the district court in granting summary judgment in the Township's favor on this issue.

G.

Qualified Immunity

The District court held that the individual township supervisors and the zoning board members were entitled to qualified immunity. Except as to defendant Latschar, the Township argues that the claims against the individual defendants were barred by the statute of limitations. Even if they were not time barred, the district court held that they were immune from liability as a matter of law.

The plaintiffs contend that the district court erred as a matter of law in holding that the individual defendants enjoyed a good faith, qualified immunity from liability under federal law. They claim that "the Court was required to accept plaintiffs' allegations as true that the defendants acted with improper motive, in an arbritary and discriminatory manner, and that they engaged in harassment

and conspiracy to interfere with plaintiffs' business operations." They further claim that the qualified immunity issues cannot be resolved on the basis of the pleadings alone. We do not agree.

Even if this claim were not barred under our determination that the statute of limitations barred the harassment and conspiracy claims, the plaintiffs failed to present any evidence showing they any individual defendant violated the plaintiffs' statutory or constitutional rights. Instead, throughout their brief, the plaintiffs make numerous unsupported assertions. However, the district court carefully examined the record and concluded that no reasonable juror could infer that the defendants deprived plaintiffs of any federally protected rights. We agree. Accordingly, the district court committed no error in granting summary judgement in favor of the individual defendants on the issue of qualified immunity.

H.

Section 1981 Violation

Finally, the plaintiffs alleged that the Township intentionally interfered with their business relationship in violation of their civil rights under 42 U.S.C. 1981. They contended that the Township defendants interfered with their ability to conduct their business and that the County Court orders entered against them effectively interfered with their ability to establish future relationships. Section 1981 provides in pertinent part" "All persons... shall have the right in every state...to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons

and property as is enjoyed by white citizens." This section, as originally enacted, was intended to protect persons who were potential victims of discrimination because of race and give them the full and equal benefit by white persons". The district court found that the plaintiffs have not shown that they were members of any racial or even ethnic minority.

The district court ruled that the plaintiffs' section 1981 claims failed for three reasons: "(1) assuming that the Plaintiffs are members of a religious minority, such classes are not subject to protection under 1981; (2) the Plaintiffs have failed to show that they are members of a racial or ethnic minority, which would merit 1981 protections; and (3) Plaintiffs have not shown that the Township Defendants unlawfully hindered the Plaintiffs' ability to make or endorse contracts." (08/13/98 Order at 47)

The plaintiffs contend that the district court erred in concluding that they are not members of a protected class. They argue that "it is largely irrelevant whether they are religious minorities, since they have established that they are members of a historically and culturally well-defined class that Section 1981 intended to protect." We disagree.

Even though the plaintiffs concede that section 1981 does not protect them against religious discrimination. See Vuksta v. Bethlehem Steel Cop, 540 F.Supp. 1276, 1281 (E.D. Pa. 1982) aff'd 707 F.2d 1405 (1983), they nevertheless argue that the Amish are a distinctly identifiable ethnic or racial group. However, they cite no supporting precedent and we are unable to find such precedent. Even if such precedent existed, which we seriously doubt, the district court found: "There is simply no hint in the record that any of the defendants harbored any such

bias." The court also found that the plaintiffs do not belong to any class protected by section 1981. The plaintiffs point us to none. Accordingly, we see no error in the district court's ruling that the plaintiffs could not prevail on their section 1981 claim under any imaginable theory.

II

In sum, we can see no merit to any of the plaintiffs' claims made in the United States District Court. Accordingly, the order of the district court granting summary judgements to the defendants and denying summary judgement to the plaintiffs will be affirmed. Costs taxed against appellants.

TO THE CLERK

Please file the foregoing opinion

Circuit Judge

1.P

Supreme Court, U.S.
FILED
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(2)

NO. 99-299

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1999

JONATHAN G. KING AND SARAH S. KING
Petitioners

vs.

THE TOWNSHIP OF EAST LAMPETER, et al.
Respondents

On Petition For Writ of Certiorari To The
United States Court Of Appeals
For The Third Circuit

BRIEF IN OPPOSITION

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15pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the Appeal Court properly conclude that Petitioner's claims, or some of them, were barred by the application of the statute of limitations?

2. Did the Appeal Court at the District Court properly apply the standard of review governing Motions for Summary Judgment?

3. Whether the Petitioners are precluded from pursuing a Fourth Amendment claim for unlawful seizure of property since that issue was not presented to either the District Court or the Appeal Court?

4. Whether the Appeal Court and the District Court properly concluded that Petitioners are not entitled to relief pursuant to 42 U.S.C. §1981?

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STATEMENT OF THE CASE

This civil action arises out of what Plaintiffs allege amounted to discriminatory conduct by East Lampeter Township and its officials against Plaintiffs dating back to the 1970's. Sporadically over the last two decades, East Lampeter Township was forced to take enforcement actions against Plaintiffs. Plaintiffs asserted that those enforcement activities against them were discriminatory in nature, and constituted violations of Plaintiffs' federally protected rights.

Over the last two decades, three separate judges (Bucher, Mueller, and Stengel) of the Court of Common Pleas of Lancaster County, Pennsylvania have heard and decided various matters regarding the Kings and their property situated in East Lampeter Township. Each of those judges, on more than one occasion, has expressed a

disgust with Plaintiffs' purposeful actions in failing to follow: the ordinances in East Lampeter Township; various orders and decrees entered by the Lancaster County Court of Common Pleas over the years; and a settlement agreement executed by Jonathan King. In October, 1979, Judge Mueller found Jonathan King guilty of civil contempt and authorized the local Sheriff's office to have him placed in the Lancaster County Prison due to his continued disregard for previous Orders of Court.

Problems continued regarding the Kings, their property and their failure to adhere to the valid and enforceable local ordinances and Orders of the Lancaster County Court of Common Pleas. Following a hearing in April, 1991, the Kings were again found to be in civil contempt for failing to comply with the Lancaster County Court of Common Pleas' prior Court Orders. The Kings

appealed the finding of civil contempt to the Commonwealth Court of Pennsylvania which affirmed Judge Bucher's finding on August 7, 1992. In affirming the finding of civil contempt, the Commonwealth Court noted: "It's abundantly clear from the record that the trial court's Order holding the Kings in contempt was amply supported by substantial evidence." There was no ambiguity in the Orders which would justify the willful and deliberate non-compliance with the conditions therein.

On June 6, 1995, then Zoning Officer, Russell E. Latschar, issued an enforcement notice to the Kings indicating that they were in violation of several provisions of the local zoning ordinance. The enforcement notice also instructed Plaintiffs as to when compliance must be commenced and completed, and the potential result and/or penalties if Plaintiffs failed to comply with the enforcement

notice. Due to the continuous and repeated violations and disregard of Court Orders by the Kings over the span of almost twenty years, the Township was compelled to file a Motion for Preliminary Injunction and a Complaint in Equity requesting injunctive relief with the Lancaster County Court of Common Pleas on or about June 9, 1995. Following an evidentiary hearing, Judge Stengle issued a final decree on October 23, 1997 establishing seven different requirements that the Kings were obligated to meet as a result of that Court Order. On February 6, 1998, Judge Mueller entered an Order finding Jonathan King guilty of civil contempt and noting that he had intentionally and willfully violated the agreement which he signed on October 12, 1997 which was embodied in the Court's Order of the same date, and that he made no effort to comply with any of the conditions he agreed to under that agreement signed

by him in the presence of Judge Mueller.

On August 13, 1998, the District Court issued a comprehensive and erudite opinion granting Defendants' Motions for Summary Judgment and denying Plaintiffs' dispositive motion. After thorough and extensive review of the factual record which spawned the civil action, Judge Van Antwerpen concurred with the assessment of the state court counterparts and found that the Kings have repeatedly and consciously violated zoning regulations and have ignored Court Orders and agreements signed by Mr. King himself.

On May 5, 1999, the United States Court of Appeals for the Third Circuit concluded that there was no merit to any of the Kings' claims made in the United States District Court and affirmed the trial court's August 13, 1998 Order.

REASONS FOR DENYING THE WRIT

The decision of the Third Circuit Court of Appeals does not conflict with decisions of this Court or other circuit courts.

The threshold issue on the Petition for Writ of Certiorari, as was the case in the courts below, is the avocation of the statute of limitations. Pursuant to this Honorable Court's directive in Wilson v. Garcia, 471 U.S. 261 (1985) and Board of Regents of the University of the State of New York v. Tomanio, 446 U.S. 478, 483-84 (1980), both the District Court and the Third Circuit apply Pennsylvania's two year statute of limitations for personal injury claims to Plaintiffs' federal civil rights claims. The District Court held, and the Third Circuit affirmed, that the majority of Plaintiffs' claims were barred by the two year statute of limitations. The courts below also properly concluded that Plaintiffs failed to present any evidence that

the Township's attempts to enforce its zoning regulations were part of a continuing pattern of harassment or discrimination. Moreover, since the record was devoid of any evidence that the Defendants engaged in any unconstitutional conduct within the two year period prior to the initiation of the lawsuit, and since the alleged prior unconstitutional conduct was not part of a continuing, ongoing pattern, the continuing violation theory did not apply in this case. See, West v. Philadelphia Electric Company, 45 F.3d 744, 754-55 (3d Cir. 1995); Courtney v. LaSalle University, 124 F.3d 494, 505 (3d Cir. 1997). Both the trial court and the Third Circuit applied the appropriate legal standard and concluded that the majority of Plaintiffs' claims were barred by the two year statute of limitations.

The second issue raised in the Petition for Writ of Certiorari is that the District Court and appellate court

abused the summary judgment procedure. Petitioners concede, however, that both the District Court and appellate court utilized the burden shifting procedure set forth in Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) and held that Respondents, as the moving party, bore the initial burden of identifying those portions of the record which they believe demonstrate the absence of material fact. The non-moving party must then demonstrate the existence of evidence that would support a jury finding in its favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). On appeal, the Third Circuit exercised plenary review of the District Court's Order granting summary judgment in favor of the Defendants. See e.g., Watters v. City of Philadelphia, 55 F.3d 886, 891 (3d Cir. 1995). After reviewing the factual record, the Third Circuit found no merit with any of the nine issues raised on appeal and

concluded that no reasonable juror could infer that the Defendants deprived Plaintiffs of any federally protected rights. Since the appropriate legal standards were applied in this case, the mere fact that Plaintiffs could not establish any genuine issue of material fact in support of their claims is not a proper basis for granting a Writ of Certiorari.

Thirdly, Respondents contend that Petitioners have waived any appeal on the issue of whether the District Court erred as a matter of law in allegedly ignoring Petitioners' Fourth Amendment claim for unlawful seizure of property since that issue was not raised on appeal to the Third Circuit. In the alternative, even if that issue is properly before this Honorable Court, which is denied, the District Court wrote an exhaustive 90 page opinion, carefully examining the facts and law. Regardless of whether the claim was couched as a Fourth Amendment unlawful

seizure or some other civil rights claim, there simply were no facts of record to establish an unconstitutional conduct by Defendants within two years of the filing of the Complaint in this action. Consequently, said claim is barred by application of the two year statute of limitations and/or the award of summary judgment in favor of the Defendants was appropriate because Plaintiffs failed to create any triable issue of material fact on that claim.

Finally, Petitioners alleged that both the District Court and Third Circuit erred in denying relief pursuant to 42 U.S.C. §1981. In the trial court proceedings, Plaintiffs conceded Section 1981 does not protect them against religious discrimination. See Vuksta v. Bethlehem Steel Corp., 540 F. Supp. 1276, 1281 (E.D. Pa. 1982), aff'd, 707 F.2d 1405 (1983). Moreover, Petitioners have not, and cannot cite to any supporting precedent for their assertion

that the Amish are a distinctly identifiable ethnic or racial group entitled to protection under that statute. More importantly, even if such precedent existed, which is denied, the record before both the District Court and the appellate court was devoid of any evidence of ethnic and/or racial animosity on the part of the Defendants. Thus, the Defendants were entitled to summary judgment as a matter of law on the Section 1981 claims.

Conclusion

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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